

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ... 428 J STREET, STE 800, SACRAMENTO, 95814

Technical Assistance	• •	Administration	• •	Executive/Legal	• •	Enforcement
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September 13, 1985

Timothy Cohelan
Cohelan, Khoury & Flaherty
2540 First Avenue
San Diego, CA 92103

Re: Your Request for Advice
Our File No. A-85-175

Dear Mr. Cohelan:

This letter is in response to your letter requesting advice concerning your obligations under Government Code Sections 87100, et seq., of the Political Reform Act. [1/] You were a member of the San Diego Regional Coastal Commission from 1977-1981. Presently, you are in a law firm that represents clients before the California Coastal Commission. Your law firm wishes to submit a proposal in response to a Request for Proposals from the San Diego Unified Port District for "Legislative Advocacy Services" before the Coastal Commission. According to the RFP, the Port District seeks advice and representation before the California Coastal Commission in Master Plan Amendment processing and permit matters. You asked whether you are precluded from performing these services.

CONCLUSION

You are not prohibited from representing the Port District before the Coastal Commission in connection with the Port District Master Plan Amendment proceedings. You may be precluded from representing the Port District on any specific permit matters with which you were involved as a member of the Regional Coastal Commission.

[1/] The Political Reform Act is contained in Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted.

DISCUSSION

Section 87401 prohibits a former state administrative official, after the termination of his term of office, from representing for compensation any other person (other than the State of California) before any court or state administrative agency in a judicial quasi-judicial or other proceeding if:

1. The State of California is a party or has a direct and substantial interest; and

2. The proceeding is one in which the former state administrative official participated.[2/]

The phrase "judicial, quasi-judicial or other proceeding" means "any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency...." Section 87400(c).

When you were a member of the Regional Coastal Commission, you participated in proceedings relating to the Master Plan of the Port District. As a consultant for the Port District, you would represent the District in Master Plan Amendment proceedings.[3/] A port master plan is similar to a city general plan both in required content and in the process for adoption. The Coastal Commission must certify all Port Master Plans and Plan amendments. It is our view that these types of proceedings are not covered by Section 87400, et seq., since the plans are general in nature and in application and do not involve specific individuals or entities. Accordingly, Section 87401 does not preclude you from representing the Port District in Master Plan Amendment proceedings.[4/]

[2/] Section 87402 contains a corresponding prohibition on advising, counseling, consulting or assisting under these circumstances.

[3/] All of these proceedings are conducted pursuant to the California Coastal Act. Pub. Resources Code Section 30710, et seq.

[4/] We do not reach the issue of whether a plan amendment proceeding is the "same proceeding" as the plan adoption proceeding since it is not necessary to our conclusion.

Timothy Cohelan
September 13, 1985
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Please note, however, that you should not represent the Port District in any permit matters in which you participated as a Regional Coastal Commissioner. Coastal permit proceedings are covered by Sections 87401 and 87402.

I am also enclosing copies of recent staff advice letters concerning the possible financial disclosure obligations of attorneys who lobby for or represent public agencies.

Please feel free to contact me if I can be of further assistance.

Sincerely,



Diane Maura Fishburn
Staff Counsel
Legal Division

DMF:plh
Enclosures

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LAW OFFICES OF
COHELAN, KHOURY & FLAHERTY
2540 FIRST AVENUE
SAN DIEGO, CALIFORNIA 92103
(619) 239-8148

August 6, 1985

Legal Division
Fair Political Practice Commission
P.O. Box 807
Sacramento, CA 95804

Re: Update of Advice Letter A-83-078

Gentlemen:

I enclose a copy of an advice letter written by Janis Shank McLean on April 8, 1983 in response to an inquiry.

My law firm has recently received a Request For Proposals from the San Diego Unified Port District for "Legislative Advocacy Services".

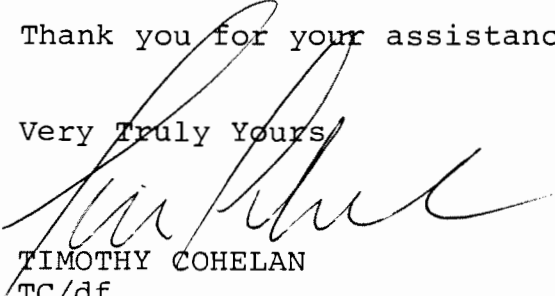
I have attached Ms. McLeans letter and the R.F.P. for your review.

The question presented is: Am I, as a former San Diego Regional Coastal Commissioner who has voted on aspects of the Port Master Plan precluded from performing those services outlined in the R.F.P.?

If the answer is yes please, advise me telephonically and we will not respond the R.F.P.

Thank you for your assistance

Very Truly Yours



TIMOTHY COHELAN
TC/df
Enclosures

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(619) 239-8148

August 14, 1985

Robert Leidigh
F.P.P.C.
1100 K Street
Sacramento

Re: Advice letter A-83-078

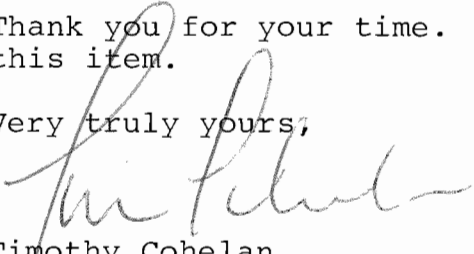
Dear Mr. Leigh:

I enclose the relevant sections of the Public Resource Code with respect to certification of Port Master Plans. Please note Section 30716 relating to amendments.

Please note the Contents of plan as outlined in Section 30711 (a) 1. "The proposed uses of land and water areas" Is this akin to zoning, hence "quasi-legislative"?

Thank you for your time. I apologize for the delay in sending this item.

Very truly yours,


Timothy Cohelan

TC/mc
Enclosures

Diane - I advised him on telephone 8/16 that I don't see that he has a problem. Indication between Port. Auth. of State. Coast Comm. seems to have been quasi legis. & therefore not a proceeding. So no 8240 problem. If you get any feeling to the contrary, let me know at once & I'll call him back. He will respond to RFP around 8/21. BL

with

tems, and shall minimize reductions of the volume, surface area, or circulation of water.

(c) The fill is constructed in accordance with sound safety standards which will afford reasonable protection to persons and property against the hazards of unstable geologic or soil conditions or of flood or storm winds.

(d) The fill is consistent with navigational safety.

Added by Stats 1976, c. 1376, p. 1.

§ 30707. Tanker terminals

New or expanded tanker terminals shall be designed and constructed to do all of the following:

(a) Minimize the total volume of oil spilled.

(b) Minimize the risk of collision from movement of other vessels.

(c) Have ready access to the most effective feasible oilspill containment and recovery equipment.

(d) Have effective dewatering facilities to receive any fouled ballast water from tankers where operationally or legally required.

Added by Stats 1976, c. 1376, p. 1. Amended by Stats 1976, c. 1376, p. 1.

Historical Note

The 1976 act amended the 1971 act by adding the following: "(d) Have effective dewatering facilities to receive any fouled ballast water from tankers where operationally or legally required."

§ 30708. Location, design and construction of port related developments

All port related developments shall be designed and constructed to:

(a) Minimize the risk of collision from movement of other vessels.

(b) Minimize the risk of collision from movement of other vessels.

(c) Minimize the risk of collision from movement of other vessels.

(d) Minimize the risk of collision from movement of other vessels.

(e) Minimize the risk of collision from movement of other vessels.

(f) Minimize the risk of collision from movement of other vessels.

(g) Minimize the risk of collision from movement of other vessels.

(h) Minimize the risk of collision from movement of other vessels.

(i) Minimize the risk of collision from movement of other vessels.

or Encroachment for service to other vessels.

Added by Stats 1976, c. 1376, p. 1.

Article 3

IMPLEMENTATION: MASTER PLAN

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30710. Jurisdictional map of port

When an area other than a port is to be developed, the commission shall after consultation with the port authority and with each port authority, have jurisdictional map of the port and the area to be developed.

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and for informational purposes, each city, county, or city and county which has a port within its jurisdiction shall incorporate the certified port master plan in its local coastal program. A port master plan shall include all of the following:

(1) The proposed uses of land and water areas, where known.

(2) The projected design and location of port land areas, water areas, berthing, and navigation ways and systems intended to serve commercial traffic within the area of jurisdiction of the port governing body.

(3) An estimate of the effect of development on habitat areas and the marine environment, a review of existing water quality, habitat areas, and quantitative and qualitative biological inventories, and proposals to minimize and mitigate any substantial adverse impact.

(4) Proposed projects listed as appealable in Section 30715 in sufficient detail to be able to determine their consistency with the policies of Chapter 3 (commencing with Section 30200) of this division.

(5) Provisions for adequate public hearings and public participation in port planning and development decisions.

(6) A port master plan shall contain information in sufficient detail to allow the commission to determine its adequacy and conformity with the applicable policies of this division.

Added by Stats.1976 c. 1029 p. 444, § 1.

§ 30712. Hearing on plan

At the consideration and approval of a proposed port master plan, the public, interested organizations, and governmental agencies shall be encouraged to submit relevant testimony, statements, and evidence which shall be considered by the port governing body. The port governing body shall publish notice at the completion of the draft master plan and submit a copy thereof to the commission and shall, upon request, provide copies to other interested persons, organizations, and governmental agencies. Thereafter, the port governing body shall hold a public hearing on the draft master plan no earlier than 30 days and not later than 90 days following the date the notice of completion was published.

Added by Stats.1977 c. 1280 p. 10, § 1.

§ 30713. Review of plan completed prior to January 1, 1977

Ports having completed a port master plan prior to January 1, 1977, shall submit a copy thereof to the commission and hold a public hearing

in accordance with the purpose of reviewing such master plan provisions of this division changes as would conform with this division. Notice of completion prior to January 1, 1977.

Added by Stats.1976 c. 1029 p. 444, § 1.

§ 30714. Adoption of plan

After public notice, hearing, and testimony received pursuant to this section, the port governing body shall adopt its master plan or portion thereof for certification in accordance with the conditions of this section. If the port governing body certifies such plan or portion of which is not certified. If the port governing body certifies the 50-day period, the port governing body shall certify the master plan. The commission shall certify the master plan if the commission finds both of the following:

(a) The master plan or portion thereof carries out the policies of this division.

(b) Where a master plan or portion thereof contains any of the developments listed in this chapter, such developments shall conform with all of the policies of this division.

Added by Stats.1976 c. 1029 p. 444, § 2.

§ 30715. Permit authority

Until such time as a port master plan is certified, the commission shall require all port master plans to be certified. After a port master plan is certified, the port governing body shall hold a public hearing on the draft master plan no earlier than 30 days and not later than 90 days following the date the notice of completion was published.